

Assembly Bill No. 1741

Passed the Assembly September 16, 2008

Chief Clerk of the Assembly

Passed the Senate September 16, 2008

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2008, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Article 6.7 (commencing with Section 63048.91) to Chapter 2 of Division 1 of Title 6.7 of the Government Code, relating to the California State Lottery, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1741, Committee on Budget. California State Lottery.

The California State Lottery Act of 1984, enacted by initiative, authorizes a California State Lottery and provides for its operation and administration by the California State Lottery Commission and the Director of the California State Lottery, with certain limitations. The act provides that none of its provisions may be changed except to further its purpose by a bill passed by a $\frac{2}{3}$ vote of each house of the Legislature and signed by the Governor. The act establishes the State Lottery Fund, which is continuously appropriated for the purposes of the California State Lottery. Existing law provides that the purpose of the act is support for the preservation of the rights, liberties, and welfare of the people by providing additional moneys to benefit education without the imposition of additional or increased taxes. Existing law sets forth the duties of the Infrastructure and Economic Development Bank and its board of directors generally in performing various financing transactions, including the issuance of bonds or the authorizing of the issuance of bonds by a trust, partnership, limited partnership, association, corporation, nonprofit corporation, or other entity, known as a special purpose trust.

This bill would, upon a filing by the Director of Finance of a designation of portions of the lottery revenue assets to be sold, permit the Infrastructure and Economic Development Bank to sell on behalf of the state those lottery revenue assets to a special purpose trust, which would be established as a not-for-profit corporation by the bill for the purpose of purchasing the assets. The bill would define lottery assets for these purposes as revenues of the state lottery that are required to be transferred into the Lottery Assets Fund and the right to receive those revenues. The

bill would permit the bank to enter into sales agreements with the special purpose trust, as specified. The bill would permit the Director of Finance to determine when lottery revenue assets may be sold. The bill would permit the special purpose trust to issue bonds on terms it shall determine and to pledge lottery revenue assets as collateral and security for the bonds. The bill would except this pledge from specified provisions regarding secured interests.

The bill would allow the Director of Finance to authorize a short-term cash flow loan, without budgetary impact, of \$3,000,000 from the General Fund to the Department of Finance to provide funds for the purpose of obtaining advice and services related to any determinations to be made by the Director of Finance pursuant to these provisions and any activities undertaken by the department or the bank to achieve the purposes of these provisions. The bill would require that the net proceeds of the sale of lottery revenue assets be first used to repay the outstanding amount of any such General Fund loan, and then deposited into the Debt Retirement Fund. The bill would require, at the direction of the Department of Finance, that moneys in the Lottery Assets Fund, or any residual interest therein, that are not already sold be transferred into the Debt Retirement Fund or be deemed assets to be sold. By permitting moneys in a continuously appropriated fund to be transferred into the Debt Retirement Fund, and by depositing moneys into a continuously appropriated fund, the bill would make an appropriation.

The bill would require that the 5 voting members of the State Public Works Board, or their designees, serve ex officio as the directors of the special purpose trust, and that the Director of Finance serve as chair of the trust, and would exempt them from liability in this regard. The bill would pledge the state to certain actions in connection with lottery revenue assets in order to protect the bondholders, including the enforcement of state laws limiting gambling and not authorizing an alternative type of lottery. The bill would provide that the bonds issued pursuant to these provisions are not deemed to constitute a debt of the state or a pledge of the faith or credit of the state.

The bill would specify that the proceeds from the sale of lottery revenue assets are not subject to certain provisions of the California Constitution regarding limitations on disbursement of proceeds of taxes and the use of General Fund revenues to be appropriated for

schools. The bill would permit the Director of Finance to enter into an agreement with one or more firms or individuals to obtain financial, operational, and valuation advice in relation to the designation of lottery revenue assets to be sold and would prescribe a process for this purpose. The bill would permit the Director of Finance to enter into a legal services agreement or agreements with counsel other than the Attorney General to provide specialized legal advice.

This bill would take effect only if SCA 12 and AB 1654 of the 2007–08 Regular Session are approved by the voters at the next statewide election and take effect pursuant to their provisions.

This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares the following:

(a) More than 20 years having passed since the inception of the California State Lottery, the lottery, as a state-owned asset, should be authorized to modernize its operations in order to improve its financial performance.

(b) It is in the public interest and a matter of urgency to authorize, and to implement as soon as possible, the sale of the right to receive a portion of the lottery revenue assets, and the issuance of bonds by the purchaser of the assets, in order to ensure that funds will be available for the stated purposes of the lottery.

SEC. 2. Article 6.7 (commencing with Section 63048.91) is added to Chapter 2 of Division 1 of Title 6.7 of the Government Code, to read:

Article 6.7. Lottery Revenue Assets Securitization

63048.91. The definitions contained in this section are in addition to the definitions contained in Section 63010 and together with the definitions contained in that section shall govern the construction of this article, unless the context requires otherwise:

(a) “Lottery revenue assets” means the amount of the net revenues of the California State Lottery required to be transferred

to the Lottery Assets Fund pursuant to paragraph (3) of subdivision (a) of Section 8880.4.5 and the rights to receive those revenues.

(b) “Operating expenses” means the reasonable operating expenses of the special purpose trust and the bank, including, but not limited to, the costs of preparation of accounting and other reports, maintenance of the ratings on the bonds, insurance premiums, or other required activities of the special purpose trust, and fees and expenses incurred for professional consultants, advisers, fiduciaries, and legal counsel, including the fees and expenses of the Attorney General incurred in connection with the enforcement of the pledges and agreements of the state or the California State Lottery Commission pursuant to Section 63048.95.

(c) “Debt Retirement Fund” means the fund created in paragraph (4) of subdivision (a) of Section 8880.4.5.

63048.92. (a) Upon a filing with the bank by the Director of Finance of a designation of the portions of the lottery revenue assets or any residual interest therein to be sold, notwithstanding any other provision of law, the bank may sell for, and on behalf of, the state, solely as its agent, those portions of the lottery revenue assets or any residual interest therein to a special purpose trust. To that end, a special purpose trust is hereby established as a not-for-profit corporation solely for the purpose of purchasing lottery revenue assets or any residual interest therein and for the purposes necessarily incidental thereto. The bank may enter into one or more sales agreements with the special purpose trust on terms it deems appropriate, which may include covenants of, and binding on, the state or the California State Lottery Commission necessary to establish and maintain the security of the bonds and exemption of interest on the bonds from federal income taxation. Lottery revenue assets, or any residual interest therein may be sold at one time or from time to time, as determined by the Director of Finance.

(b) (1) The special purpose trust may do all of the following:

(A) Issue bonds, including, but not limited to, refunding bonds, on the terms it shall determine.

(B) Do all things contemplated by, and authorized by, this division with respect to the bank, and enjoy all rights, privileges, and immunities the bank enjoys pursuant to this division, or as authorized by Section 5140 of the Corporations Code with respect

to public benefit nonprofit corporations, or as necessary or appropriate in connection with the issuance of bonds.

(C) Enter into agreements with any public or private entity and pledge the lottery revenue assets, or any residual interest therein, that it has purchased as collateral and security for its bonds.

(2) The pledge of any of the lottery revenue assets or any residual interests therein, and of any revenues, reserves, and earnings pledged in connection therewith shall be valid and binding in accordance with its terms and have priority in accordance with its terms from the time the pledge is made, and property so pledged shall immediately be subject to the lien of the pledge without the need for physical delivery, recordation, filing, or other further act. This pledge shall not be subject to Division 9 (commencing with Section 9101) of the Commercial Code or Sections 954.5 and 955.1 of the Civil Code.

(3) The special purpose trust, and its assets and income, and bonds issued by the special purpose trust, and their transfer and the income therefrom, shall be exempt from all taxation by the state and by its political subdivisions.

(c) The net proceeds of any sale of lottery revenue assets, or any residual interest therein, by the bank shall be first used to repay the outstanding amount of any General Fund loan made pursuant to Section 63048.99, and then deposited in the Debt Retirement Fund. The use and application of the proceeds of any sale of lottery revenue assets or bonds shall not in any way affect the legality or validity of that sale or those bonds.

(d) From time to time, at the direction of the Director of Finance, any moneys in the Lottery Assets Fund representing lottery revenue assets, or any residual interest therein, not already sold shall be transferred to the Debt Retirement Fund or shall be deemed to be lottery revenue assets to be sold to the special purpose trust pursuant to this article. Any moneys in the Lottery Assets Fund deemed to be lottery revenue assets to be sold shall be retained in the Lottery Assets Fund until sold.

(e) All moneys in, or to be transferred into, the Lottery Assets Fund that represent lottery revenue assets sold to a special purpose trust shall be transferred as agreed upon in the agreement of sale between the bank and the special purpose trust.

(f) The principal office of the special purpose trust shall be located in the County of Sacramento. The articles of incorporation

of the special purpose trust shall be prepared and filed, on behalf of the state, with the Secretary of State by the bank. The five voting members of the State Public Works Board shall each serve ex officio as the directors of the special purpose trust. Any of these directors may name a designee to act on his or her behalf as a director of the special purpose trust. The Director of Finance or his or her designee shall serve as chair of the special purpose trust. Directors of the special purpose trust shall not be subject to personal liability for carrying out the powers and duties conferred by this article. The Legislature hereby finds and declares that the duties and responsibilities of the directors of the special purpose trust and the duties and responsibilities of the Director of Finance established under this article are within the scope of the primary duties of those persons in their official capacities. The special purpose trust shall be treated as a separate legal entity with its separate corporate purpose as described in this article, and the assets, liabilities, and funds of the special purpose trust shall be neither consolidated nor commingled with those of the bank or the State Public Works Board.

(g) The Treasurer shall be the agent for sale for any bonds or other evidences of indebtedness issued by the special purpose trust, and shall exercise those duties pursuant to Sections 5702 and 5703.

63048.93. Notwithstanding any other provision of this division, Article 3 (commencing with Section 63040), Article 4 (commencing with Section 63042), and Article 5 (commencing with Section 63043) do not apply to any bonds issued by the special purpose trust established by this article. All matters authorized in this article are in addition to powers granted to the bank in this division.

63048.94. Any sale of some or all of the lottery revenue assets, or any residual interest therein, under this article shall be treated as a true sale and absolute transfer of the property so transferred to the special purpose trust and not as a pledge or grant of a security interest by the state, the bank board, the State Public Works Board, or the bank for any borrowing. The characterization of the sale of any of those assets as an absolute transfer by the participants shall not be negated or adversely affected by the fact that only a portion of the lottery revenue assets is transferred, by the state's acquisition of an ownership interest in any residual interest or subordinate interest in the lottery revenue assets, by any characterization of

the special purpose trust or its bonds for purposes of accounting, taxation, or securities regulation, or by any other factor whatsoever.

63048.95. (a) (1) On and after the effective date of each sale of lottery revenue assets, the state shall have no right, title, or interest in or to the lottery revenue assets sold. The lottery revenue assets so sold shall be property of the special purpose trust and not of the state, the bank board, the State Public Works Board, or the bank, and shall be owned, received, held, and disbursed by the special purpose trust or the trustee for the financing. None of the lottery revenue assets sold by the state pursuant to this article shall be subject to garnishment, levy, execution, attachment, or other process, writ, including, but not limited to, a writ of mandate, or remedy in connection with the assertion or enforcement of any debt, claim, settlement, or judgment against the state, the bank board, the State Public Works Board, or the bank.

(2) The state pledges to, and agrees with, the holders of any bonds issued by the special purpose trust that, until those bonds, together with the interest thereon and costs and expenses in connection with any action or proceeding on behalf of the bondholders are fully paid and discharged or otherwise provided for pursuant to the terms of the indenture or trust agreement pursuant to which those bonds are issued, the state will:

(A) Enforce its rights to collect the lottery revenue assets sold to the special purpose trust pursuant to this article.

(B) Not take any action that would in any way materially diminish, limit, or impair the rights to receive lottery revenue assets sold to the special purpose trust pursuant to this article.

(C) Not in any way materially impair the rights and remedies of bondholders or the security for their bonds.

(D) Enforce state laws limiting gambling, and not authorize an alternative type of lottery that would materially impair the value of the lottery revenue assets sold to the special purpose trust pursuant to this article, provided that this pledge and agreement shall not limit the state's right to negotiate, conclude, or ratify new or amended gaming compacts with federally recognized Indian tribes.

(3) The California State Lottery Commission shall pledge and agree with the holders of any bonds issued by the special purpose trust that, until those bonds, together with the interest thereon and costs and expenses in connection with any action or proceeding

on behalf of the bondholders, are fully paid and discharged or otherwise provided for pursuant to the terms of the indenture or trust agreement pursuant to which those bonds are issued, the California State Lottery Commission shall operate or cause the operation of the California State Lottery consistent with Section 8880.25.

(4) Notwithstanding this section or any other provision of this article, inherent police powers that cannot be contracted away are reserved to the state.

(b) Bonds issued pursuant to this article shall not be deemed to constitute a debt of the state or a pledge of the faith or credit of the state, and all bonds shall contain on the face of the bond a statement to the effect that neither the faith and credit nor the taxing power nor any other assets or revenues of the state or of any political subdivision of the state, other than the special purpose trust, is or shall be pledged to the payment of the principal of or the interest on the bonds.

(c) Whether or not the bonds are of a form and character as to be negotiable instruments under the terms of the Uniform Commercial Code, the bonds are hereby made negotiable instruments for all purposes, subject only to the provisions of the bonds for registration.

(d) The special purpose trust and the bank shall be treated as public agencies for purposes of Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure, and any action or proceeding challenging the validity of any matter authorized by this article shall be brought in accordance with, and within the time specified in, that chapter.

63048.96. (a) The Legislature finds and declares that, because the proceeds from the sale of lottery revenue assets authorized by this article are not “proceeds of taxes” as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

(b) Lottery revenue assets shall not be deemed to be “State General Fund proceeds of taxes appropriated pursuant to Article XIII B” within the meaning of Section 8 of Article XVI of the California Constitution, Section 41202 of the Education Code, or any other provision of law.

(c) Lottery revenue assets are not General Fund revenues for the purposes of Section 8 of Article XVI of the California Constitution or any other provision of law.

63048.97. (a) The Director of Finance is authorized to enter into an agreement with one or more firms or individuals to obtain financial, operational, and valuation advice in relation to the designation of lottery revenue assets to be sold pursuant to this article. The provisions of Section 14838 and Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code, and the regulations and directions of the Department of General Services pertaining to state contracts, shall not apply to any agreement entered into by the director pursuant to this section. Notwithstanding any other provision of law, neither the approval of the Attorney General nor of the Director of General Services is required for the execution or implementation of any agreement entered into by the Director of Finance pursuant to this section. Nothing in this section shall limit the Treasurer's authority to enter into agreements in the Treasurer's capacity as the agent for sale under Section 63048.11.

(b) The Director of Finance, in consultation with the Treasurer, shall choose firms or individuals to provide financial, operational, and valuation advisory services based on demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required, in accordance with the following procedures:

(1) The Director of Finance and the Treasurer shall establish criteria for selecting an adviser or advisers. The criteria may include, but are not necessarily limited to, professional excellence, demonstrated competence, specialized experience in performing similar services, education and experience of key personnel to be assigned, staff capability, ability to meet schedules, nature and quality of similar completed work of the firm or individual, reliability and continuity of the firm or individual, and other considerations deemed by the Director of Finance and the Treasurer to be relevant and necessary to the performance of advisory services.

(2) The Director of Finance shall send a notice of request for qualifications to firms and individuals in the Treasurer's underwriter and financial adviser pools, and shall advertise the contract for these advisor services in the California State Contracts

Register pursuant to Sections 14827.1 and 14827.2. The notice shall include a description of the advisory services required, the selection criteria based on which the contract award will be made, submission requirements and deadlines, and a Department of Finance contact name and telephone number for more information.

(3) After the final response date stated in the notice of request for qualifications, the Director of Finance and the Treasurer shall review the responses submitted, and shall evaluate the statements using the criteria contained in the notice. The Director of Finance and the Treasurer shall rank, in order of preference based on the criteria contained in the notice, the firm, firms, individual, or individuals determined to be qualified to perform the required services.

(4) The Director of Finance and the Treasurer, or their designees, may interview any of the qualified firms or individuals regarding the experience and qualifications of that firm or individual, as well as anticipated concepts and the benefits of alternative methods of furnishing the required services. Following the interviews, if any, the Director of Finance and the Treasurer shall adjust the ranking of the qualified individuals or firms to reflect those firms or individuals deemed to be the most highly qualified to perform the required services.

(5) The Director of Finance, in consultation with the Treasurer, shall enter into negotiations with the firm or individual most highly ranked pursuant to paragraph (4). In addition, if the Director of Finance, in consultation with the Treasurer, determines to contract with more than one firm or individual, the Director of Finance, in consultation with the Treasurer, shall enter into negotiations with other ranked firms or individuals, in order of ranking. Upon the conclusion of successful negotiations, the Director of Finance may enter into a contract or contracts. To the extent a negotiation with a firm or individual is, in the sole opinion of the Director of Finance, unsuccessful, the Director of Finance shall terminate that negotiation.

(6) If, after pursuing the negotiation process set forth in paragraph (5), the Director of Finance, in his or her sole discretion, concludes that the negotiations were unsuccessful, the Director of Finance shall terminate the negotiations and begin new negotiations, in consultation with the Treasurer, with the other firms or individuals ranked pursuant to paragraph (1), in order of

their ranking. The Director of Finance shall either contract with or terminate negotiations with each next most highly ranked firm or individual.

(c) If, after pursuing the negotiation process set forth in this section, the Director of Finance has been unable to negotiate the number of satisfactory contracts deemed by the Director of Finance, in consultation with the Treasurer, to be advisable, the Director of Finance may reinstitute the selection process, commencing with the issuance of a new notice of request for qualifications.

63048.98. The Director of Finance is also authorized to enter into a legal services agreement or agreements with counsel other than the Attorney General to provide specialized legal advice to the Department of Finance or the bank related to the designation of lottery revenue assets to be sold pursuant to this article. Section 11040 of this code and Section 6072 of the Business and Professions Code shall not apply to the legal services agreement entered into by the director pursuant to this section. Notwithstanding any other provision of law, regulation, or procedure to the contrary, neither the approval of the Attorney General nor of the Director of General Services is required for the execution or implementation of any agreement entered into by the Director of Finance pursuant to this section.

63048.99. The Director of Finance may authorize a short-term cash flow loan, without budgetary impact, of three million dollars (\$3,000,000) from the General Fund to the Department of Finance to provide funds for the purpose of obtaining advice and services related to any determinations to be made by the Director of Finance pursuant to this article and any activities undertaken by the Department of Finance or the bank to achieve the purposes of this article. This loan shall be repaid from the net proceeds of the first sale of the lottery revenue assets.

63048.991. This article and all powers granted hereby shall be liberally construed to effectuate its intent and their purposes.

SEC. 3. This act shall become operative only if SCA 12 and AB 1654 of the 2007–08 Regular Session are approved by the voters at the next statewide election and take effect pursuant to their provisions.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within

the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that provisions providing for the securitization of lottery revenue are in place following the next statewide election, it is necessary that this act take effect immediately.

Approved _____, 2008

Governor